

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 10, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON JOSEPH CUNNINGHAM,

Plaintiff,

v.

THE AMERICAN JUDICIAL
SYSTEM and THE UNITED STATES
OF AMERICA,

Defendants.

No. 2:22-cv-00229-MKD

ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING ACTION

By Order filed December 1, 2022, the Court directed Plaintiff Aaron Joseph Cunningham, a *pro se* federal pretrial detainee, to show cause under 28 U.S.C. § 1915(g) why he should be allowed to proceed *in forma pauperis* in this prisoner civil rights action. ECF No. 11. On December 15, 2022, Plaintiff filed a document titled “Notice of Appeal Order to Show Cause Writ of Mandamus” by which he gives this Court “Notice” that he is appealing “to the United States Supreme Court for the District of Columbia from final Judgments of Salvador Mendoza Jr and

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1 Mary K. Dimke, that I present no facts supporting an inference that I am being held
2 without due process.” ECF No. 12 at 1. Plaintiff states, “I demand, command by
3 order of writ, competent jurisdiction, directed to the Supreme Court; All other
4 inferior Courts in the United States are parties to whom the complaint is directed; I
5 demand, command performance not distance 34 Am Jist Mand § 2.” *Id.* at 3 (as
6 written in original).

7 The Court liberally construes Plaintiff’s submission as his response to the
8 Order to Show Cause. ECF No. 12. Plaintiff refers to the Court as “mentally
9 challenged Judges,” “tyrannical savages,” and “ignorant savages.” *Id.* at 6, 10-11.
10 He seems to equate pretrial detention with a violation of due process. *Id.* at 2, 10-
11 11, 15. Plaintiff asserts, “YOU, Mary Dimke and Mendoza Jr have made
12 frivolous, malicious, and fail to state a claim without facts and I Appeal your
13 primitive judgments, to which are a betrayal to this Country, and I will prove this
14 upon my release.” *Id.* at 11. To the extent Plaintiff may wish to appeal a decision
15 of the District Court, he should comply with the Federal Rules of Appellate
16 Procedure.

17 Plaintiff claims, “I am under imminent danger of serious physical injury. 28
18 U.S.C. § 1915(g) for which the pretrial detention of my body by the Judicial
19 system has caused intentional infliction of emotional distress.” *Id.* at 12 (as written
20 in original). He asserts, “the state has forced me into enslavement of those

1 convicted of crimes and detained in jails established for dully convicted criminals .
2 . . Jails are PENAL INSTITUTIONS. Institutions constituting a person liable to
3 punishment.” *Id.* at 13 (as written in original). He further alleges, “I am under
4 imminent danger of serious physical injury 28 U.S.C. § 1915(g) to which I am
5 being detained with savages that pose an imminent danger of serious physical
6 injury. I have been assaulted in the past by convicted criminals who pose an
7 imminent danger of serious physical injury.” *Id.* at 14 (as written in original).

8 Plaintiff states, “because of the risk of imminent danger these
9 savages/convicted criminals put us under I Appeal your decision Ms. Demske and
10 view your assurptions as prejudicial to the safety of my welfare and demand that my
11 complaint be transferred to the Supreme Court who has original jurisdiction of said
12 complaint, Nor You or the Kangaroo Judicial system you Defend or Conspire with
13 hold jurisdiction over me, You are an official of the Eastern Washington District of
14 Washington to which a party in this dispute. I command change of venue to the
15 Supreme Court. I demand writ of Habeas Corpus. I demand writ of mandamus. I
16 demand the Appeal of your factless judgment without any explanation to the the
17 fact is the Constitution, the fact is Pretrial detention is a violation of Due Process.
18 Detention of any kind is to deprive liberty” *Id.* at 14-15 (as written in
19 original). This Court declines Plaintiff’s demands to transfer his pleadings to the
20 United States Supreme Court.

1 The Court is unable to infer from Plaintiff's conclusory assertions that he
2 was under imminent danger of serious physical injury at the time he filed his civil
3 rights complaint pursuant to 42 U.S.C. § 1983 on October 13, 2022. *See Ray v.*
4 *Lara*, 31 F.4th 692, 695 (9th Cir. 2022) ("the imminent danger exception to the
5 PLRA three-strikes provision requires a nexus between the alleged imminent
6 danger and the violations of law alleged in the complaint."). The Court finds that
7 Plaintiff has failed to overcome the preclusive effects of 28 U.S.C. § 1915(g).
8 Although granted the opportunity to do so, Plaintiff did not pay the \$402.00 filing
9 fee to commence this action.

10 Furthermore, to the extent Plaintiff seeks relief available pursuant to a Writ
11 of Habeas Corpus, he would need to file a separate Petition for Writ of Habeas
12 Corpus. It appears he has done so. *See Cunningham v. United States of America*,
13 No. 4:22-cv-05165-MKD. The Court also notes that Plaintiff has supplied a
14 signature for his Motion to Stay, ECF No. 13, in compliance with Rule 11, Federal
15 Rules of Civil Procedure. ECF No. 15.

16 Accordingly, **IT IS ORDERED:**

17 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 2, is
18 **DENIED.**

19 2. This action is **DISMISSED WITHOUT PREJUDICE** for failure to
20 comply with 28 U.S.C. § 1914(a).

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